

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isaac Forman	Team: Squad #1	CCRB Case #: 201807780	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/05/2018 11:00 AM	Location of Incident: [REDACTED]	Precinct: 77	18 Mo. SOL 10/5/2019	EO SOL 10/5/2019	
Date/Time CV Reported Thu, 09/20/2018 8:57 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 09/20/2018 8:57 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM John Loreto	15515	955093	PSA 2
2. POM Gregory Andre	19779	958249	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A.POM John Loreto	Abuse: Police Officer John Loreto stopped § 87(2)(b)	[REDACTED]
B.POM Gregory Andre	Abuse: Police Officer Gregory Andre stopped § 87(2)(b)	[REDACTED]
C.POM John Loreto	Force: Police Officer John Loreto used physical force against § 87(2)(b)	[REDACTED]
D.POM Gregory Andre	Force: Police Officer Gregory Andre used physical force against § 87(2)(b)	[REDACTED]
E.POM Gregory Andre	Abuse: Police Officer Gregory Andre damaged § 87(2)(b)'s property.	[REDACTED]
F.POM John Loreto	Discourtesy: Police Officer John Loreto spoke discourteously to § 87(2)(b)	[REDACTED]
G.POM John Loreto	Abuse: Police Officer John Loreto threatened § 87(2)(b) with the use of force.	[REDACTED]
H.POM John Loreto	Abuse: Police Officer John Loreto frisked § 87(2)(b)	[REDACTED]
I.POM John Loreto	Abuse: Police Officer John Loreto searched § 87(2)(b)	[REDACTED]
J.POM Gregory Andre	Abuse: Police Officer Gregory Andre frisked § 87(2)(b)	[REDACTED]
K.POM Gregory Andre	Abuse: Police Officer Gregory Andre searched § 87(2)(b)	[REDACTED]
L.POM Gregory Andre	Force: Police Officer Gregory Andre used physical force against § 87(2)(b)	[REDACTED]

Case Summary

On September 20, 2018, § 87(2)(b) filed this complaint with the CCRB via the intake phone line.

On April 5, 2018, at approximately 11:00am, § 87(2)(b) was on the § 87(2)(b) of § 87(2)(b) in Brooklyn, when PO John Loreto and PO Gregory Andre stopped him (**Allegations A and B: Abuse of Authority** § 87(2)(g)). PO Loreto allegedly punched § 87(2)(b) two or three times on his face (**Allegations C: Force** § 87(2)(g)). PO Andre then pushed § 87(2)(b) against a wall causing his phone to fall out of his pocket and crack (**Allegations D and E: Force and Abuse of Authority** § 87(2)(g)). PO Loreto drew his taser and stated to § 87(2)(b) “Don’t fucking move or I’m going to shoot you” (**Allegations F and G: Discourtesy and Abuse of Authority** § 87(2)(g)). PO Loreto then frisked and searched § 87(2)(b) (**Allegations H and I: Abuse of Authority** § 87(2)(g)). The officers brought § 87(2)(b) downstairs on an elevator. While on the elevator, PO Andre allegedly frisked and searched § 87(2)(b) (**Allegations J and K: Abuse of Authority** § 87(2)(g)). PO Andre then allegedly pushed § 87(2)(b) into a wall of the elevator (**Allegation L: Force** § 87(2)(g)). Once downstairs, PO Andre allegedly frisked and searched § 87(2)(b) again (**Subsumed into allegations J and K**). § 87(2)(b) was arrested pursuant to an active I-Card.

PO Loreto recorded a portion of this incident on his NYPD cellphone. That video was viewed by the investigator following PO Loreto’s CCRB interview. The footage begins once § 87(2)(b) is in handcuffs and the officers are waiting for the elevator to take them downstairs. It runs through just before he is placed into the transport vehicle. The footage was requested by the investigation and, at the time of this report, is still unreceived.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer John Loreto stopped § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Gregory Andre stopped § 87(2)(b)

§ 87(2)(b) testified that he was standing in the hallway of the § 87(2)(b) of § 87(2)(b) in Brooklyn when he observed PO Loreto and PO Andre. PO Loreto approached § 87(2)(b) and grabbed his right arm and asked him where he was going (Board Review 01).

§ 87(2)(b) had an open I-Card at the time of this arrest. I-Card #§ 87(2)(b) was for stalking in the fourth degree and was probable cause to arrest. It has a photograph of § 87(2)(b) on it. The I-Card was issued on § 87(2)(b) and was closed on § 87(2)(b) (Board Review 02).

PO Loreto testified that he and PO Andre were conducting an interior patrol inside of § 87(2)(b) in Brooklyn when they observed § 87(2)(b) in a hallway of the building. PO Loreto recognized § 87(2)(b) to be the subject of an active I-Card with probable cause to arrest for a domestic incident. PO Loreto testified that he and PO Andre had reviewed the active I-Cards for building residents prior to their patrol. § 87(2)(b)’s I-Card had his picture on it and that is how PO Loreto recognized him. PO Loreto testified that they approached § 87(2)(b) to place him under arrest pursuant to the active I-Card. PO Loreto asked § 87(2)(b) his name and he provided it. PO Loreto then informed him he was under arrest for the active I-Card (Board Review 03).

§ 87(2)(g) The officers checked the active I-Cards for building residents prior to their interior patrol then recognized § 87(2)(b) as having an active I-Card. They approached him with the intent to arrest him pursuant to the active I-Card (Board Review 04).

Before an officer may stop a person, there must be reasonable suspicion that a person has committed, is committing, or is about to commit a felony or misdemeanor. People v. De Bour, 40 N.Y.2d 210 (1976) (Board Review 05).

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Allegation (C) Force: Police Officer John Loreto used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Gregory Andre used physical force against § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Gregory Andre damaged § 87(2)(b)'s property.

Allegation (F) Discourtesy: Police Officer John Loreto spoke discourteously to § 87(2)(b)

Allegation (G) Abuse of Authority: Police Officer John Loreto threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that when PO Loreto grabbed him, he pulled away from PO Loreto. PO Loreto then punched § 87(2)(b) with his right hand on § 87(2)(b)'s right cheek approximately two or three times. One of § 87(2)(b)'s teeth was knocked out. PO Andre then slammed § 87(2)(b) into a wall. § 87(2)(b)'s face, chin, knees, and chest made contact with the wall. While he was pushed against the wall, § 87(2)(b)'s Iphone fell out of his jacket pocket and cracked. PO Andre put § 87(2)(b)'s hands against the wall. PO Loreto had his taser drawn and stated, "Don't fucking move or I am going to shoot you" (Board Review 01).

A photograph, taken on September 26, 2018 by Inv. Hanley, shows § 87(2)(b) missing an upper tooth towards the front on the right side of his mouth (Board Review 06).

§ 87(2)(b)'s medical records, which includes visits on § 87(2)(b), § 87(2)(b), and § 87(2)(b), indicate that he was treated at the hospital multiple times for issues related to his teeth. There are references to issues on the left side of his mouth. There are no references to issues with teeth on the right side of his face. It is unclear if this is related to this incident or not as there is no mention of the pain being the result of § 87(2)(b)'s interaction with the police (Medical Records).

As § 87(2)(b)'s arrest was sealed, his arrest photo was expunged and could not be obtained by the investigation.

PO Loreto testified that he asked § 87(2)(b) to put his hands behind his back. § 87(2)(b) did not comply. § 87(2)(b) became belligerent and began screaming and cursing at the officers. § 87(2)(b) placed both his hands in his jacket pockets. PO Loreto gave him multiple commands to remove his hands and § 87(2)(b) refused to comply. PO Loreto then pulled out his taser and pointed it at § 87(2)(b). He testified that he did so because he feared for his safety. PO Loreto feared for his safety because § 87(2)(b) was acting belligerent, had his hands in his pockets, and refused commands to remove them. After a brief period, § 87(2)(b) remove his hands from his pockets and PO Andre handcuffed him without further issue. PO Loreto denied punching § 87(2)(b). PO Loreto did not hear § 87(2)(b) complain of any pain or issue with his teeth and was never made aware of such. He also denied stating, "Don't fucking move or I'm going to shoot you." He further denied saying fuck to § 87(2)(b) or referencing using his taser. PO Loreto denied that PO Andre pushed § 87(2)(b) into a wall or used any force. PO Loreto did not observe § 87(2)(b)'s phone fall from his pocket. While vouchering § 87(2)(b)'s property, PO Loreto did observe § 87(2)(b)'s phone to be cracked. He did not know how this occurred (Board Review 03).

§ 87(2)(g) § 87(2)(b) immediately became irate upon approach and refused to remove his hands from his pockets. PO Andre denied that PO Loreto punched § 87(2)(b). He could not recall PO Loreto stating "don't fucking move or I'm going to shoot you," and denied hearing PO Loreto use any profanity or reference using his taser. PO Andre testified that once § 87(2)(b) removed his hands from his pockets, he placed § 87(2)(b) into handcuffs. He could not recall if he placed § 87(2)(b) against a wall to do so but denied pushing § 87(2)(b) into a wall. He denied that § 87(2)(b)'s phone fell out of § 87(2)(b)'s pocket and denied doing anything that could have damaged § 87(2)(b)'s phone (Board Review 04).

§ 87(2)(b), § 87(2)(g)
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Allegation (H) Abuse of Authority: Police Officer John Loreto frisked § 87(2)(b)

Allegation (I) Abuse of Authority: Police Officer John Loreto searched § 87(2)(b)

Allegation (J) Abuse of Authority: Police Officer Gregory Andre frisked § 87(2)(b)

Allegation (K) Abuse of Authority: Police Officer Gregory Andre searched § 87(2)(b)

§ 87(2)(b) testified that once he was in handcuffs, PO Loreto patted the outside of his clothing around his legs, hip, and jacket. PO Loreto then reached inside § 87(2)(b)'s pants pockets and jacket pockets. Later, once in the elevator, PO Andre patted the outside of § 87(2)(b)'s clothing before reaching into his pants and jacket pockets. Once downstairs, prior to being placed into a

marked police vehicle, PO Andre patted § 87(2)(b)'s pockets and then reached inside (Board Review 01).

PO Loreto testified that § 87(2)(b) was frisked after being placed into handcuffs. PO Loreto testified that § 87(2)(b) was considered under arrest as soon as he was handcuffed. PO Loreto did not know whether he frisked § 87(2)(b) or if PO Andre did. He testified that § 87(2)(b) was frisked for the officers' safety. PO Loreto could not recall if § 87(2)(b) was searched at this point. PO Loreto testified that § 87(2)(b) was not frisked or searched inside the elevator. He testified that, prior to placing § 87(2)(b) into a transport vehicle he frisked § 87(2)(b). He did so for the officers' safety. PO Loreto denied searching § 87(2)(b) at this point (Board Review 03).

PO Andre testified that he frisked § 87(2)(b) once they got downstairs, prior to placing him into the transport vehicle. He testified that he did so for the officers' safety. PO Andre denied frisking § 87(2)(b) any additional times and did not observe PO Loreto do so. He denied searching § 87(2)(b) and did not observe PO Loreto do so (Board Review 04).

An officer may search § 87(2)(b) incident to a lawful arrest with no additional justification required. People v. Weintraud, 35 N.Y.2d 351 (1974) (Board Review 07).

§ 87(2)(b), § 87(2)(g)

Allegation (L) Force: Police Officer Gregory Andre used physical force against § 87(2)(b)

§ 87(2)(b) testified that, while being brought downstairs in the elevator, PO Andre slammed him into the wall of the elevator. § 87(2)(b)'s chest and the left side of his face hit the wall (Board Review 01).

Video footage, taken by PO Loreto on his department phone was viewed by the investigator following PO Loreto's interview. It shows the officers riding the elevator down. PO Andre is holding § 87(2)(b) while § 87(2)(b) appears to be attempting to walk around. PO Andre angles § 87(2)(b) so he faces the wall of the elevator. § 87(2)(b) does not appear to make contact with the wall.

PO Andre testified that after § 87(2)(b) was in handcuffs, he was moving and walking around. PO Andre continued to hold on to him. On the elevator, PO Andre turned § 87(2)(b) to face the wall but did not push § 87(2)(b) into the wall. § 87(2)(b)'s body did not make contact with the elevator wall (Board Review 09).

PO Loreto testified that while they were on the elevator with § 87(2)(b) continued to yell and curse. He was not doing anything physically. PO Loreto denied that PO Andre pushed § 87(2)(b) into a wall of the elevator (Board Review 03).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 09).
- PO Loreto has been a member-of-service for five years and has been a subject in three CCRB complaints and three allegations, none of which were substantiated. § 87(2)(g)
- PO Andre has been a member-of-service for three years and has been a subject in two CCRB complaints and two allegations, neither of which was substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to the Office of Court Administration, between April 11, 2016 and June 18, 2019, § 87(2)(b) was convicted of § 87(2)(b) and disorderly conduct (four times) and § 87(2)(b)
- A FOIL request for Notices of Claim was submitted to the New York City Office of the Comptroller on June 17, 2019. The result of this request will be added to the case file upon receipt.

Squad No.: 1

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date